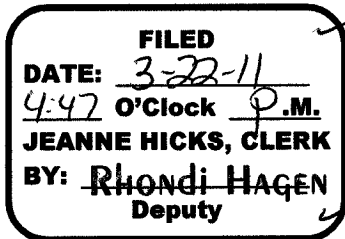


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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: March 22, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney  
Sheila Polk/Bill Hughes,  
(Via OnBase)  
(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly,  
(Via electronic mail)  
(Co-Counsel for Defendant)

(Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter  
MUNGER TOLLES & OLSON LLP,  
(Via electronic mail)  
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:

NATURE OF PROCEEDINGS

COURT REPORTER

TRIAL – Day 19

Mina Hunt

START TIME: 8:22 a.m.

APPEARANCES:

Sheila Polk, Counsel for State  
Bill Hughes, Co-Counsel for State  
Detective Ross Diskin, Case Agent  
James Arthur Ray, Defendant  
Tom Kelly, Co-Counsel for Defendant  
Luis Li, Co-Counsel for Defendant  
Truc Do, Co-Counsel for Defendant  
Miriam Seifter, Co-Counsel for Defendant  
Victim Services Representative

The Jury is not present.

The Court and Counsel address legal issues, specifically:

(Motion in *Limine* regarding) Expert Testimony, Mr. Pace

Counsel present oral argument.

The Court has previously ruled with regard to 2009, the presence or absence of those items relates to what was going on at that time. With regard to Mr. Pace, the issue is whether negligence-type evidence is permissible in a reckless manslaughter case. There is no summary judgment procedure in criminal cases in Arizona, so we are talking about what is potential relevant evidence.

The Samurai Game

Counsel address the Court regarding whether the question of Mr. Ray properly conducting the game is relevant to the charge of manslaughter.

The Court will consider the arguments and case law presented and will issue a written ruling with regard to the proposed testimony of Mr. Pace.

Trial Scheduling

The Court and Counsel discuss trial scheduling issues.

Counsel are advised that the Court anticipates a request by one of the Jurors for a copy of the list of witnesses. Discussion ensues. The Court intends to decline any such request.

~~Recess~~

At 9:25 a.m. the trial resumes with all previously appearing parties and the Jury present.

Laurie Gennari, previously sworn, resumes the witness stand and testifies further.

Counsel for State requests a sidebar discussion.

The Jury is admonished, excused for a recess and leaves the courtroom.

The Court and Counsel address State's sidebar topic. Oral argument is presented on the issue of the witness's lawsuit and bias.

~~~Recess~~~

At 11:09 a.m. the trial resumes with all previously appearing parties present. The Jury is not present.

Counsel are advised that the Court will take an early noon recess to consider the sidebar issue.

~~~Noon Recess~~~

At 1:01 p.m. the trial resumes with the previously appearing parties present, with the exception of Bill Hughes. The Jury is not present.

The Court **finds** that the pending issue does not involve hearsay. With regard to the current witness, the statement is not being offered as the truth, it is being offered as an inconsistent statement. It is also offered to show bias and motive. Rule 801(D)(2) is not directly applicable to this situation as it is not offered for the truth.

The best guide for this issue is Rule 613. That in one sense handles the disclosure issue. The Osborne case draws a distinction between testimonial evidence and real evidence. The Osborne case came up in conjunction with a photograph being presented for the first time and the Court disallowed that. The Osborne case did not provide authority for that. The Osborne case does provide strong authority for the proposition that if statements are going to be used basically for impeachment they don't have to be provided to the other side. Rule 613 controls that. Then the question becomes is this in fact a statement of the witness. The authority the Court has been provided by the Defense indicates it has to do with whether or not the person has knowledge of what is in the complaint. The Court has reviewed the testimony of the witness who did indicate she read "as much as she could stand".

The Court further **finds** that the information is proper impeachment. It is a different question as to whether it can come in as extrinsic evidence. The Court has not seen direct authority on that but if it is a statement, there is the possibility of extrinsic evidence being admitted as long as Rule 613(B) is complied with. Therefore, the cross examination of the witness regarding the complaint will be allowed.

Counsel address the Court regarding appropriate redirect on the issue. The Court provides Counsel with the citation, *Commonwealth v Hanford*, 937 A.2d 1094, Pennsylvania.

The Court and Counsel address a note from one of the Jurors.

~~~Recess~~~

At 1:23 p.m. the trial resumes with the previously appearing parties and the Jury present.

Laurie Gennari resumes the witness stand and testifies further.

Exhibits 178 and 179 are offered and admitted into evidence without objection.

The Court and Counsel conduct a sidebar discussion on the record.

The Jury is reminded of the admonition, excused for a recess and leaves the courtroom.

The witness is excused for the recess and leaves the courtroom.

The Court and Counsel address playing audio clips for the Jury.

The Court states that the excerpt the State proposes is consistent with one testified to on direct. The question of the witness's observation of Ms. Neuman that came up on cross is a legitimate area of redirect. It is not necessary or appropriate to expand this particular excerpt but the State may go into it on redirect. This has been testified to with regard to the one particular point that related to that excerpt. It does not really fill out the context.

Further discussion ensues.

The Court advises that since it is consistent with what was indicated before, the State may address this on redirect. However, playing the other part will not be permitted.

~~~Recess~~~

At 3:15 p.m. the trial resumes with the previously appearing parties and the Jury present.

Laurie Gennari resumes the witness stand and testifies further.

Exhibit 784 is offered. There being an objection by the State, IT IS ORDERED the Exhibit is not admitted at this time.

The Court and Counsel conduct a sidebar discussion on the record.

Defense Counsel offers Exhibit 784. There being an objection, IT IS ORDERED Exhibit 784 is admitted into evidence.

Questions for the witness are submitted by the Jury, discussed at sidebar on the record and are asked and answered.

The witness is reminded of the Rule of exclusion of witnesses and temporarily excused, subject to recall.

The Court addresses Juror concerns. The Court advises that a copy of the witness list will not be provided to Jurors.

Melinda Martin is sworn and testifies.

The Jury is reminded of the admonition, excused for the day and instructed to return at 9:15 a.m.

The witness is advised of the Rule of exclusion of witnesses.

The Court stands adjourned for the day.

**END TIME: 4:47 p.m.**

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Verde